

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

TONY ARMOND SIMMS,

Defendant and Appellant.

E050981

(Super.Ct.No. SWF013195)

OPINION

APPEAL from the Superior Court of Riverside County. Rodney L. Walker, Judge. (Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Christian C. Buckley, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On January 9, 2007, defendant and appellant Tony Armond Simms pleaded guilty to two counts of robbery (Pen. Code, § 211)¹ and admitted that in both counts a principal was armed with a handgun (§ 12022, subd. (a)(1)). He also admitted that he had suffered one prior serious felony conviction (§ 667, subd. (a)) and three prior strike convictions (§§ 667, subds. (c)-(e)(2)(A), 1170.12, subd. (c)(2)(A)). After the trial court denied defendant's motion to dismiss his prior strike convictions pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, he was sentenced to a total term of 27 years to life.

This is defendant's third appeal. In his first appeal, case No. E043488, this court remanded the matter for resentencing, as the record was clear that the trial court had misunderstood its discretion to dismiss his prior strike convictions. (*People v. Simms* (April 1, 2008, E043488 [nonpub. opn.] (*Simms I*)).) On remand, defendant was resentenced to an indeterminate term of 32 years to life.

In his second appeal, case No E046039, this court again remanded the matter for resentencing. (*People v. Simms* (September 3, 2009, E046039 [nonpub. opn.] (*Simms II*)).) On remand, defendant filed another *Romero* motion. Following a new *Romero* and sentencing hearing, the trial court denied defendant's motion to dismiss his prior strike convictions a third time and sentenced defendant to an indeterminate term of 31 years to life.

¹ All future statutory references are to the Penal Code unless otherwise stated.

In this appeal, defendant is challenging the underlying plea. We affirm the judgment.

I²

FACTUAL AND PROCEDURAL BACKGROUND

On August 15, 2005, codefendants Delbert Smith and Michael Bailey robbed a California Coast Credit Union branch in Temecula of approximately \$5,500 and fled in a Honda. Defendant served as the driver of the get-away car.

Defendant was charged with two counts of robbery. It was also alleged that defendant participated in the robberies knowing that another principal was armed with a firearm. The information further alleged that defendant had previously been convicted of a prior serious felony, to wit, an April 1993 robbery, and that defendant had sustained three prior strike convictions, to wit, the April 1993 robbery and two December 1998 robberies.

On January 9, 2007, in a plea to the court, defendant pled to the sheet and admitted the prior enhancement allegations. The court reviewed the plea form with defendant and explained his maximum exposure and the consequences of pleading guilty. The court also asked defendant whether he had placed his initials on the plea form, signed the plea form, and understood the plea. Defendant replied in the affirmative. The court also asked defendant whether he required additional time with his attorney before he pled guilty or whether he had any questions. Defendant replied in the negative. The court

²

The factual and procedural background is taken from *Simms I*.

also asked defendant whether he understood his constitutional rights and whether he was willing to give up those rights so that he could plead guilty and admit all the enhancement allegations. Defendant replied in the affirmative. The court found that defendant intelligently and voluntarily waived his constitutional rights and that his plea and admissions were free and voluntary.

Defendant subsequently filed a motion to dismiss his prior strike convictions, and the People filed their opposition. The hearing on the *Romero* motion was held on May 18, 2007. Essentially misunderstanding its discretion, the trial court denied defendant's motion to dismiss his prior strike convictions. Defendant was thereafter sentenced to a total indeterminate term of 27 years to life.

Following several appeals and resentencing hearings, as noted above, defendant was eventually sentenced to an indeterminate term of 31 years to life.

On May 18, 2010, defendant filed a notice of appeal based on the sentence or other matters occurring after the plea. He also challenged the validity of the plea and admissions. His request for certificate of probable cause was granted on May 24, 2010.

II

DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493], setting forth a statement of the case, a summary of the facts, and potential arguable issues and requesting this court to conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, which he has done. In his supplemental brief, defendant seeks to withdraw his guilty plea based on improper inducement from his trial counsel. This issue is not properly before this court on defendant's appeal from his resentencing. Defendant never raised the validity of his plea in the trial court or in his first two appeals. His failure to do so bars him from raising it now. (*People v. Senior* (1995) 33 Cal.App.4th 531, 535-538.) Just as in that case, we deem defendant's belated claim of error waived "on the ground that defendant had the opportunity to raise this issue in two prior appeals, but failed to do so" and he has offered no reasonable justification for the delay. (*Id.* at p. 534.)

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

III

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI
J.

We concur:

McKINSTER
Acting P.J.

KING
J.